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04 UNITED STATES DISTRICT COURT
05 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

06 BILLY NEWBERRY,) CASE NO. C06-1018-MJP-MAT
07 Plaintiff,)
08 v.) REPORT AND RECOMMENDATION
09 CAPT. F. FINSEN, et al.,)
10 Defendants.)
11

12 Plaintiff is currently incarcerated in the Snohomish County Jail (“Jail”) in Everett,
13 Washington. He has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, along with
14 an application for leave to proceed *in forma pauperis* (“IFP application”). The complaint has not
15 been served on defendants.

16 The court has reviewed the complaint pursuant to 28 U.S.C. § 1915A. Plaintiff alleges
17 that he is being denied access to the Jail’s law library. (Complaint at 3). Specifically, he alleges
18 that the Jail grants library access only to those inmates who are representing themselves in an on-
19 going civil or criminal matter. (*Id.* at 4). For the reasons stated below, the court recommends that
20 the complaint and action be dismissed without prejudice.

21 In describing the right of access to the courts, the Supreme Court stated that the right
22 “guarantees no particular methodology but rather the conferral of a capability – the capability of

01 bringing contemplated challenges to sentences or conditions of confinement before the courts . .
02 . . [It is this capability] rather than the capability of turning pages in a law library, that is the
03 touchstone” of the right. *Lewis v. Casey*, 518 U.S. 343, 356-57 (1996). On the same day that
04 plaintiff submitted the instant § 1983 complaint, plaintiff also submitted two other complaints,
05 which have been assigned case numbers C06-1017-RSM-MJB and C06-1019-MJP-MJB. Thus,
06 it appears that even if plaintiff’s allegations were true, lack of access to a law library has not
07 impeded his ability to file actions in federal court. Therefore, it appears that plaintiff has the
08 “capability” to challenge conditions of confinement that the Supreme Court referred to as
09 paramount in an “access to courts” claim.

10 Moreover, it now appears that because he is representing himself in these two other
11 pending lawsuits, plaintiff will no longer be barred access to the law library under the Jail policy
12 that he seeks to challenge here. Thus, it appears that plaintiff has not suffered an actual injury
13 stemming from the alleged violation, a jurisdictional requirement that flows from standing doctrine
14 and may not be waived. *See Lewis v. Casey*, 518 U.S. 343, 349 (1996). Accordingly, plaintiff’s
15 complaint and this action should be dismissed for failure to state a claim upon which relief can be
16 granted. In addition, plaintiff’s IFP application may be denied as moot. A proposed Order is
17 attached.

18 DATED this 31st day of July, 2006.

19 
20 Mary Alice Theiler
21 United States Magistrate Judge
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